

Appeal No. VA10/2/018 & 019

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Bernard Keane (VA10/2/018)
and
Catherine Flynn (VA10/2/019)

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2200506, Shop at Lot No. Unit 5 (VA10/2/018), and Property No. 2200505, Shop at Lot No. Unit 6 (VA10/2/019), Gort Road Shopping Centre, Lifford, Ennis ARA, Ennis UD, County Clare

B E F O R E

John Kerr - Chartered Surveyor

Deputy Chairperson

Michael F. Lyng - Valuer

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF OCTOBER, 2010

By Notices of Appeal dated 20th day of April, 2010 the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €7.00 on each of the above-described relevant properties.

The grounds of Appeal as set out in the Notices of Appeal are:

"The RV is excessive, inequitable and bad in law."

With the consent of the parties the oral hearings in relation to these appeals were held contemporaneously in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on 2nd July, 2010.

At the hearing the appellants were represented by Mr. Patrick Darmody, FIAVI, MRICS, ASCS, MCI Arb, Chartered Surveyor, Sherry Fitzgerald McMahon, O'Connell Square House, Ennis, County Clare, while Mr. David Molony, BSc, MRICS, District Valuer in the Valuation Office, represented the respondent, the Commissioner of Valuation.

The Issue

The only issue between the parties was quantum, with both appellants maintaining that the rateable valuation of €77 on their respective properties was excessive.

Valuation History

A draft valuation certificate was issued on 27th May 2009 for €72 for Catherine Flynn (VA10/2/019), while on the same date a similar certificate issued for Bernard Keane (VA10/2/018) for €68. Representations were submitted on behalf of both appellants in June 2009. In August 2009 the Revision Officer issued his decision to increase both valuations to €77. Appeals were lodged and following consideration of these appeals, the Commissioner made no changes. On 20th April, 2010 a Notice of Appeal to the Valuation Tribunal was lodged against the decision of the Commissioner in each case.

The Properties

The subject properties are in the case of Catherine Flynn (VA10/2/019) a pharmacy, and in the case of Bernard Keane (VA10/2/018) a butcher shop. Each is a 3-storey mid-terrace building with retail use on the ground floor and storage on the upper levels. The buildings have a brick and limestone façade with glazed shop fronts. The upper floors are concrete and are accessed via an internal stairs at the back of each retail unit.

The properties are located in the Gort Road Shopping Centre on the old Galway to Ennis Road, opposite Ennis General Hospital, and are a short distance from the town centre.

Accommodation

Floor areas for both properties are agreed as follows:

Ground Floor	108.50 sq. metres
First Floor Store	95.40 sq. metres
Second Floor Store	44.50 sq. metres

The Appellant's Case

Having taken the oath, Mr. Darmody adopted his précis as his evidence-in-chief for each of the subject properties. He described both subject properties as modern, purpose-built, recently developed units which were built on the forecourt of the former Shiels Ford dealership. The centre includes a Centra food-store, seven retail units and a drive-thru fast food restaurant, together with auto fuel sales and 90 surface level car park spaces which are segregated from the retail by an internal two-way traffic lane. Four of the seven units at the development are vacant. An underground car park at the development provides 69 car park spaces, which are not open to the public. Construction of a Medical Centre to the rear of this development has been ceased for the present time and the uncompleted structure has been fenced off.

Mr. Darmody characterised the subject properties as having a high profile, but stated that the roundabout at the location of the subject properties was engineered in a manner as to render ingress to the subject premises very difficult.

Mr. Darmody stated that prior to the redevelopment of the site, the appellant in VA10/2/019 - Catherine Flynn had operated a pharmacy in temporary accommodation, within the footprint of the original Shiels car showroom. He noted that Bernard Keane (VA10/2/018) commenced trading at the relevant property when the complex opened. He contended that the mix of retail units trading at the centre is such that trolley shopping is not a feature of this development. The subject properties comprise 3 floors, but access to the upper floors is internal, which suggests that the upper floors may only be occupied as a single unit.

Mr. Darmody contended for a rateable valuation of €7.50 on each of the subject properties, calculated as follows:

Ground Floor	108.50 sq. metres @	€98.00 per sq. metre	=	€10,633
First Floor store	95.40 sq. metres @	€30.00 per sq. metre	=	€2,862
Second Floor store	44.30 sq. metres @	€15.00 per sq. metre	=	€86
NAV				€14,381
				€14,381 @ 0.40% = €57.52
RV Say				€57.50

Comparisons

Mr. Darmody drew the Tribunal's attention to 2 comparison properties, being:

1. Murphy's Pharmacy, Roslevan Shopping Centre
2. Unit 4, Clare Road Business Centre

Mr. Darmody said that his Comparison No. 1 did not occupy the first floor, unlike both of the subject properties. He described the location of Murphy's pharmacy as an area of high-density residential development, with a large Costcutter food store and 7 retail units at ground floor level. He stated that the first floors at Roslevan Shopping Centre are occupied by commercial enterprises including a dental practise, beauty salon and a gym. He confirmed that Murphy's Pharmacy floor area is 154 sq. metres and was valued at €109 per sq. metre. Mr. Darmody described his second comparison as a small retail unit in a development located about 1.3km from Ennis town centre. This comparison, he noted, is much smaller than the subject properties, with the ground floor (153.96 sq. metres) valued at €100 per sq. metre, while the stores area of 17.8 sq. metres is valued at €65 per sq. metre.

Cross-Examination

Under cross-examination by the respondent, Mr. Darmody, when asked which shopping centre has the higher volume of traffic, responded that the Gort Road Shopping Centre has a better volume of passing traffic than the subjects. He also asserted that rental values of retail units in Ennis do not necessarily fall because of distance from the town centre. Mr. Darmody stated that many customers at the subject development purchase petrol or diesel, go to the kiosk to pay for same, but often do not venture into the retail units there. He claimed that the tenants at the subject centre are very disappointed with the volume of trade there.

Mr. Darmody also replied to the Respondent that the Roslevan Centre, though further from the town centre, benefits from a much higher local residential density than the subject, which

would suggest to him that rental values, rather than fall by distance, may increase at that centre. He acknowledged however that the Gort road, where the subject two premises are located, also benefits from high profile and that the McDonalds restaurant at the complex is busy, as indeed other units within the centre are, but that the good trade enjoyed by those are specific to unit uses and the nature of the service purveyed from those units doing well.

Again addressing the distance of the subject and the Roslevan facility from the town centre, the former being a little less than a kilometre and the latter approximately 2.4 km distant, Mr. Darmody noted the high level of business being conducted at the former, which in his view was largely due to the high value, high volume business being conducted there by the large Convenience Store and McDonalds. He also remarked that the subject centre, though busy, is suffering from significant competition arising from the nearby Aldi, Lidl and Dunnes Stores. Further discussion between the parties ensued with respect to vehicular ingress and egress facilities to the subject and comparison properties.

Respondent's Evidence

Mr. David Molony, having taken the oath, adopted his written précis as his evidence-in-chief. In his evidence, Mr. Molony contended for an NAV of €19,289.82, for each of the subject properties, calculated as set out below:

Ground Floor	108.50 sq. metres @	€136.67 per sq. metre =	€14,820.69
First Floor store	95.40 sq. metres @	€34.16 per sq. metre =	€3,258.86
Second Floor store	44.30 sq. metres @	€7.32 per sq. metre =	<u>€1,210.27</u>
NAV			€19,289.82
		€19,289.82 @ 0.40% =	€77.15
RV Say		€7	

Mr. Molony outlined the valuation history of both properties as already detailed herein. In support of his opinion of net annual value, he introduced 3 comparisons being:

1. Catherine Flynn (former premises); area 58.57 sq. metres; assessed at €136.67 per sq. metre.

2. Murphy's Pharmacy, Roslevan Shopping Centre: Shop: area 156.31 sq. metres; assessed at €109.34 per sq. metre, Store area 12.09 sq. metres; assessed at €41.00 per sq. metre.
3. Peter Gunter, Clare Road Business Centre: Shop area 153.96 sq. metres; assessed at €100.00 per sq. metre; Store area 17.80 sq. metres; assessed at €5.00 per sq. metre.

Mr. Molony stated that the tone of the list in the Ennis Town Council area for retail units is €136.67 per sq. metre. He said that his Comparison No. 1 was the former pharmacy which existed prior to the building of the subject pharmacy premises, but that it had no upper floors. The Tribunal asked Mr. Molony if he had thought about adjusting this figure of €136.67 to reflect the fact that both subjects have upper floors with internal doors only, and further, if the occupiers of the subject premises were to have a choice of not taking those upper floors, what view might the hypothetical tenant(s) take. Mr. Molony said that if a tenant did not have sufficient ground floor area in the subject premises then the upper floors may be needed as storage.

Mr. Molony confirmed that the valuation certificates were issued and had changed from €8 (VA10/2/018) and €72 (VA10/2/019) to €77 due to a measurement issue.

Both Mr. Darmody and Mr. Molony made brief closing submissions.

Findings

1. The Tribunal finds that, as confirmed by the respondent, the tone of the list was established on single storey premises, based only on a floor area of approximately one fifth the area of the subject properties.
2. The Tribunal acknowledges that the tone of the list applied to a premises with a floor area of 58.57 sq. metres, being the former Flynn Pharmacy (exclusively ground floor) was €136.67 per sq. metre. However, having regard to the two upper floors with internal access only from the ground floor for both subject premises, thus limiting the potential use of such floors and or their rental capacity, and viewed, at best, to be ancillary and not necessary to the primary retail function of a premises on the ground floor, it is considered appropriate that an adjustment apply in these particular circumstances to the rate per sq. metre applied by the Commissioner.

3. The common comparison of Murphy's Pharmacy, an own-door, ground floor retail unit with a level assessed at €109 per sq. metre, located at the Roslevan Shopping Centre, served as a useful guide to the Tribunal.
4. Similarly, common Comparison No. 2 for the appellants and Comparison No. 3 for the respondent was also very helpful, particularly by reference to the Tribunal Judgment **VA05/02/005 & 006 – Peter Gunter & Carrigaholt Restaurants Ltd.** The impairments on value of the foregoing relevant property at the Clare Road Business Centre were clearly set out in its findings, and the determination which applied to Unit No. 1 therein which employed a rate of €100 per sq. metre, reflected such unique circumstances.
5. The Tribunal does not consider that such adverse effects on the rental values as cited in the above judgement apply in these circumstances.

Determination

The Tribunal is of the view that a fair and equitable assessment of valuation of each of the subject properties, should be as follows:

Ground Floor	108.50 sq. metres	@ €109.00 per sq. metre	= €11,826.50
First Floor store	95.40 sq. metres	@ €30.00 per sq. metre	= €2,862.00
Second Floor store	44.30 sq. metres	@ €15.88 per sq. metre	= <u>€703.48</u>
NAV			€15,391.98
€15,391.98 @ 0.40% =			€61.57
RV Say			€62

And the Tribunal so determines.